

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte LOUIS DISCHLER

Appeal No. 2001-0140
Application No. 09/356,916

ON BRIEF

Before COHEN, STAAB, and CRAWFORD, Administrative Patent Judges.
CRAWFORD, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 through 9 and claims 17 through 20, which are all the claims pending in the application. Claims 10 through 16 have been canceled.

The appellant's invention is a dispenser system with at least one binary dispensing array. An understanding of the invention can be derived from a reading of exemplary claim 1, which appears in the appendix to the appellant's brief.

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The prior art

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Braverman	3,780,856	Dec. 25, 1973
Peery et al. (Peery)	4,522,622	Jun. 11, 1985
Kim	5,445,195	Aug. 29, 1995
Hanson	5,529,179	Jun. 25, 1996
Sadow	5,909,220	Jun. 1, 1999

The rejections

Claims 1 through 3, 17 and 19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Braverman in view of Peery.

Claims 4, 5, 18 and 20 stand rejected under 35 U.S.C. § 103 as being unpatentable over Hanson and further in view of Braverman and Peery as combined regarding claim 1.

Claims 6 through 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kim in view of Braverman and Peery.

Claims 8 and 9 stand rejected under 35 U.S.C. § 103 as being unpatentable over Kim, Braverman, and Peery and further in view of Sadow.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellant regarding the above-noted rejections, we make reference to the answer (Paper No. 14) for the examiner's complete reasoning in support of the rejections

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and to the brief (Paper No. 12) and reply brief (Paper No. 15)
for the appellant's arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellant's specification and claims, to the applied prior art references, and to the respective positions articulated by the appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We turn first to the examiner's rejection of claims 1 through 3, 17 and 19 under 35 U.S.C. § 103 as being unpatentable over Braverman in view of Peery. The examiner finds that Braverman discloses all the limitations of claim 1 including an Nth (2nd) dispenser containing an active agent. In the examiner's view, the depiction in Braverman, in Figures 2 and 4, in which two individual content elements is contained in a chamber 20 and one individual content element in another chamber depicts a binary dispensing array. The examiner also argues that Braverman twice explicitly refers to the use of his invention in dispensing agents in a prescribed or predetermined sequence which

implies that the composition of individual agent doses in different or varying concentrations, because otherwise the sequence would be irrelevant.

The examiner relies on Peery for disclosing a dispensing system which comprises contained agents of varying dosage amounts whether twice or four times or N times a base contained amount. The examiner concludes:

It would have been obvious to one of ordinary skill in the art at the time of the invention was made especially in view of Peery et al to incorporate two or more different binary dosages in the invention of Braverman for the purpose of allowing the dispensing of different levels or dosages of agents [final rejection at page 3].

The appellant argues that the examiner has made improper assumptions in regard to the Braverman figures. The appellant argues that the examiner improperly assumes that the contents in the Braverman chambers are the same size and contain the same active agent.

We agree with the appellant that Braverman and Peery do not suggest a binary dispensing array. While Figures 2 and 4 of Braverman depict what appears to be two pills in one chamber and one pill in another chamber, there is no disclosure in Braverman related to what the two pills in the chamber are. Specifically, Braverman does not disclose that the two pills in the chamber are

the same pills in the same dosage and concentration. While the examiner argues that it is entirely natural and obvious to assume that one pill equals one active agent dosage and 2 pills equals two active agent doses, the examiner points to no disclosure for this assumption. In our view, it could be assumed that the two pills are of different active agents. We note that Braverman teaches that the medical dispensing device therein disclosed is useful for a nurse to dispense a combination of pills (col. 1, lines 11 to 14).

In addition, even if we assume that the two pills in the container are the same ingredient at the same dosage, such would not suggest a binary sequence, as is argued by appellant, because the numbers 1 and 2 are part of many sequences other than binary. As such, one would have to know what is contained in additional chambers to establish a binary sequence.

While the examiner is correct that Peery teaches a dispensing system comprising a multiple dispenser array which contains dispensing reservoirs of differing volumes, Peery, like Braverman, discloses nothing about a dispensing system comprising a binary array.

In view of the foregoing, we will not sustain this rejection of the examiner.

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We will, likewise, not sustain the remaining rejections of the examiner as we have examined the Hanson, Kim and Sandow references, and these references do not cure the deficiencies noted above for Braverman and Peery in that these references do not disclose or suggest a binary dispensing array

The decision of the examiner is reversed.

REVERSED

Irwin Charles Cohen)	
Administrative Patent Judge)	
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Lawrence J. Staab)	BOARD OF PATENT
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	
Murriel E. Crawford)	
Administrative Patent Judge)	

MEC:tdl

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